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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGEL TORRES,

Defendant and Appellant.

B268032

(Los Angeles County  
Super. Ct. No. BA427227)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Lisa B. Lench, Judge. Affirmed.

John F. Schuck, under appointment by the Court of Appeal,  
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## INTRODUCTION

Pursuant to a plea agreement, defendant Angel Torres pleaded no contest to Penal Code<sup>1</sup> section 273.5, subdivision (a), and was sentenced to a term of four years. We have conducted an independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and conclude that no arguable issues exist. We therefore affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

At a preliminary hearing on May 6, 2016, defendant's live-in girlfriend testified that in the midst of an argument, defendant physically assaulted her, broke her nose, choked her, interfered with attempts to call 911, and trapped her in a bathroom, blocking her path when she tried to escape. The Los Angeles District Attorney (the People) filed an information alleging that defendant violated section 273.5, subdivision (a), willful infliction of corporal injury on a cohabitant (count 1, a felony), and section 236, false imprisonment by violence (count 2, a felony). Count one included an enhancement for great bodily injury in circumstances involving domestic violence pursuant to section 12022.7, subdivision (e).

Before the preliminary hearing, the prosecutor stated, "The People's current pre-preliminary hearing offer is four years, a plea to count 1, admit the allegation for high term on count 1 of four years and then stay a sentence on the 12022.7(e) allegation." The prosecutor explained, "Upon my review of the police report, I believe this case is very underfiled. . . . I anticipate there's at least a false imprisonment charge, possibly others as we see how the facts develop. And I calculate the maximum on the complaint

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

as charged at 9 years. I believe we get to 12 to 13 or 14 depending on additional charges that are added.”

Defendant initially pleaded not guilty. At the case setting hearing on August 10, 2015, defendant’s counsel told the court that defendant wanted a new attorney. The court held a *Marsden*<sup>2</sup> hearing, in which defendant stated, “I want another attorney because this attorney is not helping me.” Defendant added, “He is simply saying to me the same offer that the prosecution has given me since the very beginning.” Defense counsel told the court that he spoke with the prosecution in an attempt to lower the sentence, but the prosecutor rejected the offer and reiterated that the four year offer was still available. Counsel added, “I have explained to [defendant] on previous occasions it is either the trial or the people’s offer. It isn’t much of a choice.” The court denied defendant’s request for a new attorney, stating, “I don’t fin[d] there is any breakdown in the attorney/client relationship in this case.”

As the case was about to proceed to trial a week later, defendant’s counsel told the court again that defendant may not be satisfied with his attorney. The court held another *Marsden* hearing, and defendant told the court that his attorney “hasn’t been trying to help me get a better offer. I have been asking for a long time. He’s never bettered the offer. They’ve always wanted to give me four years.” The court explained, “[T]he district attorney makes the offer. Not your lawyer.” Defendant said, “[H]e’s always been pushing me to take the four years.” The court responded, “[T]hat’s because you’re looking at nine years, eight months if you go to trial. That’s why he’s suggesting you might want to take the four. I’m guessing. I don’t know. I

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<sup>2</sup> Pursuant to *People v. Marsden* (1970) 2 Cal.3d 118.

haven't talked to him about it." The court also noted that the prosecution might be reluctant to reduce the sentence further because when police arrived to investigate following the incident, they found that defendant had firearms in the house that, as a felon, he was not allowed to have. The court asked defense counsel if he had any response to defendant's concerns, and counsel explained that he attempted to reduce the sentence but the prosecutor "came back earlier this month on August the 10th and advised us that they were not going to change their offer." Counsel also stated, "It's not a particularly strong case for the defense," and noted that defendant had priors, so "four years isn't an offer I would suggest is spectacular, but it's fair given the situation."

The court told defendant, "The reality of the situation is this: If you want four years, the district attorney is willing to offer four years. You can go to trial, if you want to go to trial. That's your option." The court said the minimum sentence after trial probably would be five years, "[a]nd I'm not sure that I would give you the minimum." The court also said, "If, on the other hand, you think that you will win after trial, should you go to trial, I can't tell you what to do. I can just tell you what the reality of the situation is." Defendant said, "I want them to change the offer a little at least. The GBI [great bodily injury enhancement] carries only three years. Why are they carrying four?" The court explained, "GBI is added on to the charge of the – it's in addition to the charge. They're offering not to sentence you on the GBI. They're offering to give you no additional time on the GBI." Defendant said, "I have never wanted to go to trial. I just want less than four years." The court responded, "You're not getting less than four years. It's four years or go to trial."

Defendant asked his attorney how long he would serve minus credit for time served, and they conferred off the record. The court denied defendant's *Marsden* motion, saying "[A]t this time I am denying [the] request. I don't see any basis of finding that [your attorney] is not providing competent representation to you."

The *Marsden* hearing ended, and in open court defendant knowingly waived his rights and pleaded no contest to count 1 and admitted the great bodily injury enhancement. Count 2 was dismissed. When asked if he was pleading freely and voluntarily, defendant answered, "Yes." When asked if anyone had threatened him to induce him to plead, defendant answered, "No." The court sentenced defendant to the upper term of four years on count one pursuant to section 1170, subdivision (h)(3). The court sentenced defendant to three years on the great bodily injury enhancement, and the sentence was stayed. The court imposed various fines, fees, and requirements, and prohibited contact with the victim.

Defendant filed a notice of appeal. On the form defendant checked the box stating that he was challenging the validity of his plea, and he hand wrote, "The court violated Defendant's rights under Marsden, IAC." Defendant requested a certificate of probable cause, stating that he "made numerous attempts to discharge his counsel of record . . . due to [counsel's] complete failure to meet with defendant to discuss the case, the elements, defenses, and mitigation." Defendant also stated that his attorney "threatened defendant into accepting a plea to facts that are untrue through his direct use of threats," because the attorney told him that "the judge has promised she will impose a minimum of 9 years @ 85%." Defendant said that at his *Marsden* hearing he "was effectively prevented from explaining the

breakdown of the attorney client relationship, due to the court's experience and the defendant's lack of legal training and experience." Defendant said the court told him "I will sentence you to 9 years." The record does not reflect that the judge made this statement, although she did tell defendant that he was "looking at" nine years, eight months if he lost at trial. The judge also stated that the minimum sentence would be five years.

Defendant also stated that "Judge Lench used an improper basis to increase defendant's sentence by a year. Judge Lench stated, The extra year is because of the guns that were found in the house." The record also does not show that the judge made such a statement. Rather, the record shows that the four-year sentence was based on the prosecution's plea deal and related to count 1 only. The trial court denied defendant's request for a certificate of probable cause.

On appeal, defendant's appointed counsel filed a brief requesting that we independently review the record for error. (*Wende, supra*, 25 Cal.3d at p. 441.) We directed counsel to send the record and a copy of the brief to appellant, and notified him of his right to respond within 30 days. Appellant did not respond.

### **DISCUSSION**

A criminal defendant who appeals following a plea of no contest without obtaining a certificate of probable cause may only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect the plea's validity. (Cal. Rules of Court, rule 8.304(b)(1).) Defendant did not file a motion to suppress evidence. Defendant's argument that his plea was coerced is not appealable without a certificate of probable cause. Even if the argument were appealable, the

record does not support the arguments he made in his request for a certificate of probable cause, as noted above.

Defendant's contention that the court added an extra year to his sentence for uncharged weapons violations arose after the entry of the plea and does not affect the plea's validity, and is therefore appealable without a certificate of probable cause. (*People v. Panizzon* (1996) 13 Cal.4th 68, 74 ["issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed" are appealable without a certificate for probable cause].) There is no arguable appellate issue with respect to sentencing, however.

The record makes clear that defendant was sentenced to four years on count 1 alone, with no other enhancements or punishments. Section 273.5, subdivision (a), states that the upper term for a violation is for four years, imprisonment, and the court made clear in the record that it imposed the upper term of four years on count 1. There is no indication in the record that the court considered defendant's possession of firearms or any other uncharged crimes when sentencing defendant on count 1. Defendant's challenge to his sentence therefore does not provide a basis for reversing the judgment on appeal.

With respect to other potential sentencing or post plea issues for which a certificate of probable cause is not required because they do not in substance challenge the validity of the plea (Cal. Rules of Court, rule 8.304(b)(4)(B)), we have examined the entire record and are satisfied defendant's counsel has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277–284;

*People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende*,  
*supra*, 25 Cal.3d at p. 443.)

**DISPOSITION**

The judgment is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.